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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 732

ROOSEVELT RACEWAY, INC.,

Appellant,

v.

COUNTY OF NASSAU and PETER P. ROCCHIO, SR., as COMPTROLLER OF NASSAU COUNTY,

Appellees.

ON APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

MOTION TO DISMISS OR AFFIRM

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney *Pro Se*
Appearing pursuant to
New York Executive Law, § 71.

DANIEL M. COHEN
Assistant Attorney General
of Counsel

249 Press of Fremont Payne, Inc., 80 Washington St., N. Y.—BOwling Green 9-8153

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Pursuant to Rule 16 of the revised rules of this Court the Attorney General of the State of New York moves that the judgment of the Court of Appeals of the State of New York be affirmed on the ground that the questions presented by this appeal are so unsubstantial or well-settled as not to require further argument, or, in the alternative, to dismiss the appeal on the ground that it is not within the jurisdiction of this Court because it does not present a substantial federal question.

Statement

The Attorney General joins in the motion made by the appellees to dismiss the above numbered appeal taken by the appellant, Roosevelt Raceway. The Attorney General,

to avoid repetition, supports completely the position taken in the motion papers dated November 23, 1966 filed with this Court by the appellees. Further support of that position, particularly with reference to the holding herein (App. St. Jur., 14a, 15a) that there is a long-established state policy in New York to separate treatment for harness and thoroughbred racing, is to be found in the similar prior holding in *Matter of Murtha* v. *Monaghan,* 1 A. D. 2d 178, 180, 181 (1st Dept., 1956), aff'd 2 N. Y. 2d 819 (1957), reargt. den. and remittitur amended 3 N. Y. 2d 880 (1957), cert. den. 355 U. S. 891 (1957).

CONCLUSION

For the foregoing reasons, the appeal should be dismissed, or in the alternative, the judgment below should be affirmed.

Dated: New York, New York, November 28, 1966.

Respectfully submitted,

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney *Pro Se,*
Appearing pursuant to New York
Executive Law, § 71.

DANIEL M. COHEN
Assistant Attorney General
of Counsel

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